MONTANA LEGISLATIVE HISTORY

Chapter 425 1993

Bill H _____ S 406 Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Mar 12	✓ C	Hearing Date(s)	Feb 19	✓ C
	Mar 18	✓ C			C
		C			C
		C			C
Date Out	Mar 19	✓ C		Feb 19	✓ C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE BILL NO. 406

INTRODUCED BY BARTLETT

IN THE SENATE

FEBRUARY 15, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 20, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 22, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 48; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 19, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 29, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 31, 1993	THIRD READING, CONCURRED IN. AYES, 96; NOES, 2.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

APRIL 6, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
APRIL 7, 1993	THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

SB 403 INTRODUCED BY RYE

CLARIFY DEFINITION OF OUTPATIENT FACILITIES IN HEALTH CARE LICENSING LAWS

2/15	INTRODUCED		
2/15	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/15	FIRST READING		
2/16	FISCAL NOTE REQUESTED		
2/17	HEARING		
2/18	FISCAL NOTE RECEIVED		
2/18	FISCAL NOTE PRINTED		
2/18	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/22	2ND READING PASSED AS AMENDED	28	16
2/23	3RD READING PASSED	37	12
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO HUMAN SERVICES & AGING		
2/23	FIRST READING		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED	79	21
3/31	3RD READING FAILED	42	58

SB 404 INTRODUCED BY KEATING, ET AL.

DIRECT DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO TREAT HIV/AIDS IN SAME MANNER AS OTHER COMMUNICABLE DISEASES

2/15	INTRODUCED		
2/15	REFERRED TO PUBLIC HEALTH, WELFARE & SAFETY		
2/15	FIRST READING		
2/16	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/20	COMMITTEE REPORT—BILL NOT PASSED		
2/20	ADVERSE COMMITTEE REPORT ADOPTED	40	9
2/22	FISCAL NOTE RECEIVED		
2/23	FISCAL NOTE PRINTED		

SB 405 INTRODUCED BY KEATING, ET AL.

ALLOW AN EMPLOYER TO COMPLY WITH REQUIREMENT TO PROVIDE WORKERS' COMPENSATION COVERAGE BY OBTAINING EMPLOYEE RETIREMENT INCOME SECURITY ACT COVERAGE

2/15	INTRODUCED		
2/15	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
2/15	FIRST READING		
2/20	HEARING		
2/22	FISCAL NOTE REQUESTED		
2/22	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/23	2ND READING PASSED	31	15
2/24	3RD READING FAILED	20	28
3/03	FISCAL NOTE RECEIVED		
3/03	FISCAL NOTE PRINTED		

SB 406 INTRODUCED BY BARTLETT

EXPAND TEMPORARY RESTRAINING ORDER AND CRIMINAL LAWS THAT PROTECT AGAINST DOMESTIC ABUSE

2/15	INTRODUCED
2/15	REFERRED TO JUDICIARY
2/15	FIRST READING
2/15	FISCAL NOTE REQUESTED

2/19	HEARING		
2/20	COMMITTEE REPORT—BILL PASSED		
2/20	FISCAL NOTE RECEIVED		
2/22	FISCAL NOTE PRINTED		
2/22	2ND READING PASSED	48	0
2/23	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO JUDICIARY		
2/23	FIRST READING		
3/17	HEARING		
3/19	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/29	2ND READING CONCURRED AS AMENDED	95	4
3/31	3RD READING CONCURRED	98	1
	RETURNED TO SENATE WITH AMENDMENTS		
4/06	2ND READING AMENDMENTS CONCURRED	50	0
4/07	3RD READING AMENDMENTS CONCURRED	49	0
4/14	SIGNED BY PRESIDENT		
4/14	SIGNED BY SPEAKER		
4/15	TRANSMITTED TO GOVERNOR		
4/20	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 425		
	EFFECTIVE DATE: 10/01/93		

SB 407 INTRODUCED BY FRITZ, ET AL.

AMEND UNIVERSITY SYSTEM OPTIONAL RETIREMENT PROGRAM

BY REQUEST OF BOARD OF REGENTS OF HIGHER EDUCATION AND MONTANA TEACHERS' RETIREMENT BOARD

2/15	INTRODUCED		
2/15	REFERRED TO STATE ADMINISTRATION		
2/15	FIRST READING		
2/15	FISCAL NOTE REQUESTED		
2/19	HEARING		
2/19	FISCAL NOTE RECEIVED		
2/19	COMMITTEE REPORT—BILL PASSED		
2/22	FISCAL NOTE PRINTED		
2/22	2ND READING PASSED	48	0
2/23	3RD READING PASSED	44	5
	TRANSMITTED TO HOUSE		
2/23	REFERRED TO STATE ADMINISTRATION		
2/23	FIRST READING		
3/09	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	86	12
3/16	3RD READING CONCURRED	81	16
	RETURNED TO SENATE		
3/20	SIGNED BY PRESIDENT		
3/21	SIGNED BY SPEAKER		
3/22	TRANSMITTED TO GOVERNOR		
3/25	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 178		
	EFFECTIVE DATE: 07/01/93		

SB 408 INTRODUCED BY CHRISTIAENS

AMEND THE MONTANA ELDER AND DEVELOPMENTALLY DISABLED ABUSE PREVENTION ACT

2/15	INTRODUCED		
2/15	REFERRED TO STATE ADMINISTRATION		

Senate BILL NO. 406

INTRODUCED BY Bartlett

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206, 46-6-311, 46-6-602, AND 46-9-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-121, MCA, is amended to read:

"40-4-121. Temporary order or temporary injunction. (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion ~~shall~~ must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring ~~him~~ the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any ~~child~~ family member;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; ~~and~~

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; and

~~(e)~~(f) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) ~~of this section~~ without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury

against the petitioner by a family ~~or--household~~ member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family ~~or--household~~ member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and

(b) requesting relief under Title 27, chapter 19, part 3. Any ~~preliminary~~ temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include ~~spouses,--former spouses,--and--persons-cohabiting-or-who-have-cohabited-with the-other-party-within--1--year--immediately--preceding--the filing-of-the-petition~~ family members or partners.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall

determine whether good cause exists for the injunction to continue for 1 year.

(7) If the court determines on the basis of a party's history of violence and the testimony presented at the hearing that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.

(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued.

(9) Restraining orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by subsection (3)(a).

~~(6)~~(10) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(7)~~(11) A temporary order or ~~temporary~~ injunction or permanent injunction:

(a) ~~does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;~~

~~(b)~~ may be revoked or modified ~~before final decree~~ on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 or order under Title 27, chapter 19, part 3, as appropriate;

~~(c)~~(b) terminates upon order of the court or ~~when a final decree is entered or~~ when a the petition ~~for dissolution or legal separation~~ is voluntarily dismissed; and

~~(d)~~(c) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

~~(8)~~(12) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

(13) As used in this section the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships

created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex."

Section 2. Section 45-5-206, MCA, is amended to read:

"45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if ~~he~~ the person:

(a) purposely or knowingly causes bodily injury to a family member or ~~household member~~ partner; ~~or~~

(b) negligently causes bodily injury to a family member or partner with a weapon; or

~~(b)~~(c) purposely or knowingly causes reasonable apprehension of bodily injury in a family member or ~~household member~~ partner. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or ~~household member~~ partner, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, ~~"family member or household member" means a spouse, former~~

~~spouse,--adult-person-related-by-blood-or-marriage,-or-adult person-of-the-opposite-sex-residing-with--the--defendant--or who--formerly--resided--with--the--defendant,~~ the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) A person convicted of domestic abuse for the first or second time shall be fined not to exceed ~~$500~~ $1,000 or be imprisoned in the county jail not to exceed ~~6--months~~ 1 year, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not ~~to exceed~~ less than $500 and not more than $50,000 ~~or~~ and be imprisoned in the county jail or in the state prison for a term not ~~to--exceed~~ less than 10 days and not more than 5 years, or both.

(4) (a) A person convicted of domestic abuse ~~for--the first--or--second--time~~ shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling

LC 0763/01

ordered under this section is a civil contempt of court."

Section 3. Section 46-6-311, MCA, is amended to read:

"**46-6-311. Basis** for arrest without warrant. (1) A peace officer may arrest a person when no a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or ~~household-member~~ partner constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 4. Section 46-6-602, MCA, is amended to read:

"**46-6-602. Notice of rights to victim upon arrest in domestic violence situation.** Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody or a family member or partner, as defined in 45-5-206; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other party if there is a legal obligation to do so"."

Section 5. Section 46-9-302, MCA, is amended to read:

"**46-9-302. Bail schedule -- acceptance by peace officer.** (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a ~~household-member~~ partner, as defined in 45-5-206.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0406, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:
Expands the temporary restraining order laws and the criminal laws that protect persons against domestic abuse; defining "family member" and "partners" for purposes of both areas of law; increases the maximum fine for first and second convictions of domestic abuse and increases the minimum fine for third and subsequent convictions.

ASSUMPTIONS:
1. The bill will have no material fiscal impact on state agencies.

FISCAL IMPACT:
No material impact for state agencies.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
There may be an increase in fines and forfeitures revenue for local governments because of increases in minimum/maximum fines. The potential revenue impact is not subject to accurate estimate.

Dave Lewis 2.20 93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Sue Bartlett 2/22/93
SUE BARTLETT, PRIMARY SPONSOR DATE

Fiscal Note for SB0406, as introduced
SB 406

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993, at 10:01 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SJR 13
	SB 368
	SB 400
	SB 406
Executive Action:	SB 41
	SB 246
	SB 277
	SB 304
	SB 4
	SB 5
	SB 242
	SB 333
	SB 362
	SB 386

to enter into those agreements.

Questions From Committee Members and Responses:
Senator Towe suggested expanding the definition in section 2-9-101 to include conservation district supervisors. Senator Towe said the definition would automatically bring them under the coverage of the state and all the other provisions would automatically apply.

Senator Nathe agreed if they would be covered individually from lawsuits.

Senator Towe asked Mr. Hill about making conservation districts a governmental entity so they would be covered and employees would be covered under section 2-9-305. Mr. Hill said he would not object.

Senator Nathe told the Committee that conservation district supervisors are not employees, they are elected officials.

Senator Nathe asked Senator Towe about section 2-9-305 and section 2-9-101. Senator Towe said 2-9-305 was the operative section. 2-9-101 was the definition section.

Senator Towe said he would check to see if the supervisors could be covered in either section.

Closing by Sponsor:
Senator Nathe told the Committee that conservation district supervisors do need coverage.

Discussion:
Chair Yellowtail asked Senator Nathe and Senator Towe to work on SB 400.

HEARING ON SB 406

Opening Statement by Sponsor:
Senator Bartlett, District 23, told the Committee that SB 406 proposes changes in the law relating to the crime of domestic abuse and temporary restraining orders issued in domestic abuse situations. In 1981, the legislature recognized that laws did not adequately protect victims of spouse abuse and made it possible for a victim, who was not involved in a divorce or legal separation, to seek a restraining order. In 1985, the legislature established domestic abuse as a crime as well as the violation of a restraining order. Self help temporary restraining orders were authorized. Justice and District Courts were empowered to issue temporary restraining orders. In addition, the protection of restraining orders were extended to people who were cohabiting or who had in the past cohabited. The

definition of what constituted sufficient grounds for a victim to seek protection was expanded. In 1989, City Courts were added to the Justice and District Courts as locations where domestic violence restraining orders could be obtained. In 1991, the threat of bodily harm was included as a sufficient grounds for a domestic abuse victim to petition for a restraining order. Senator Bartlett said SB 406 was another step in the evolutionary process. SB 406 came out of experiences of people who work daily with the domestic abuse statutes. Their experience identified the area of the laws which were inadequate or insufficient to accomplish the state's purpose, mainly the protection of victims of domestic abuse. Section 2 of SB 406 would broaden the crime of domestic abuse, increase the penalties, and address counseling for perpetrators. Section 1 of SB 406 would broaden the class of people who may seek protection through restraining orders. Sections 3 through 5 change the language in the related criminal statutes to match the changes instituted in Sections 1 and 2.

Proponents' Testimony:
Judith Wang, Missoula City Attorney, urged the Committee to favorably consider SB 406. Ms. Wang said SB 406 allows for judges, in appropriate circumstances, to permanently enjoin the defendant from contact with the victim. SB 406 would allow for permanent injunctions, in certain circumstances, to protect victims that were very afraid. SB 406 would require proof of abuse before a restraining order was ordered. Mr. Wang said the definition of who would be eligible for a restraining order would be expanded to include all family members and those people involved in an ongoing, intimate relationship. The counseling provision in SB 406 would allow a judge to order more counseling, if after a minimum of 25 hours of counseling, the counselor felt the defendant was still violent and in need of more counseling. Ms. Wang urged the Committee to support SB 406.

Amy Pfeifer, Womens Law Section, read from prepared testimony. (Exhibit #8) Ms. Pfeifer submitted testimony from Janet Cahill. (Exhibit #9)

Diane Sands, Montana Womens Lobby, supported SB 406. Ms. Sands submitted testimony from Melody Brown. (Exhibit #10)

Carl Ipson, Police Officer in Missoula, supported SB 406.

Craig Hoppe, Montana Magistrate Association, supported SB 406.

Opponents' Testimony:
Kathleen Fleury told the Committee she had concerns about the language in SB 406. Ms. Fleury said anyone would be able to make an allegation and sign an affidavit. Ms. Fleury said many allegations are untrue and made out of vindictiveness. Ms. Fleury asked for a DO NOT PASS recommendation for SB 406.

Questions From Committee Members and Responses:
Senator Rye asked Senator Bartlett why the Clerk of Court from Yellowstone county was opposed to SB 406. Senator Bartlett said it was because of the additional workload.

Senator Franklin asked Ms. Wang to comment on the opponents testimony. Ms. Wang told the Committee that few people make frivolous complaints.

Senator Halligan asked Ms. Wang about the definition of partner. Ms. Wang said she tried to come up with a definition that the court could get some kind of grasp on. An ongoing, intimate relationship would be a relationship that continued for a period of time. Ms. Wang said the relationship could have been in the past or present.

Chair Yellowtail asked Ms. Pfeifer about the new definition of a family member. Ms. Pfeifer said a family member would include a member of a family that had an ongoing relationship with each other, for instance a mother and son, or a father and daughter.

Chair Yellowtail asked Ms. Wang about the intent of the definition of a family member. Ms. Wang said the intention was to include household members in addition to family members. For instance if an uncle was living in the home and abused his niece, he would be considered a member of the household, therefore he would be subject to the restraining order. However, if he did not live in the household, he would not be included. Ms. Lang said they wanted to expand the definition, but did not want to include all of an extended family. The definition would only include someone who lived in the household.

Senator Bartlett asked Ms. Wang if anyone was sent to prison for a parole violation because of a false accusation. Ms. Wang said no.

Closing by Sponsor:
Senator Bartlett told the Committee there were areas in the domestic violence statute that did not cover certain situations, therefore SB 406 was drafted. Senator Bartlett urged a DO PASS recommendation for SB 406.

EXECUTIVE ACTION ON SB 303

Motion/Vote:
Senator Grosfield moved to TABLE SB 303. The motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 4

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-19-9

NAME	PRESENT	ABSENT	EXCUSE
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

WOMEN'S LAW SECTION

STATE BAR OF MONTANA

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 2-19-93
BILL NO. SB406

To: Chairman Sen. Yellowtail and Senators of Senate Judiciary Committee

From: K. Amy Pfeifer, Chair, Women's Law Section, State Bar of Montana

Re: SB 406 - Expand Domestic Abuse Laws to Other Persons

Date: February 19, 1993

The Women's Law Section of the State Bar of Montana urges your support of SB 406. I speak on behalf of the Section and not the State Bar of Montana.

Our Section has a continuing interest in the protection of this state's victims of violence, particularly in the area of domestic and sexual abuse. We support Sen. Towe's stalking bill (SB 37) and believe the amendments to the domestic violence protection statutes that you have before you today will work well together with Sen. Towe's bill to strengthen the relief available to victims of violence, particularly the women and children of this state. We have worked with the Montana Coalition Against Domestic Violence to bring these amendments to your attention.

The amendments are fairly simple. First, we wish to broaden the class of individuals that may petition for a domestic violence restraining order under 40-4-121. As some of you may know, this statute, and the procedural statutes which follow it, allow victims of domestic violence to obtain forms from district, city, municipal and justice courts to petition those courts, generally pro se, for protection from their abuser. Much of the current law stems from extensive amendments to this section in 1985. The current language allows spouses, former spouses and persons who are or have cohabited within the last year to apply for relief under this section. As I am sure you are all aware, a couple does not have to have lived together to have a child in common or to be parties to an abusive relationship. That is the reason for the definition of partner: the cohabitation requirement is gone.

Family member is defined to include parents and children, including relationships created by adoption or step families. Children learn behaviors from their parents, and children go on to become abusers and victims. Teenage sons model their father's behaviors and abuse

their mothers, fathers may abuse their daughters. Without an ability to receive a restraining order under this statute, which allows them to obtain forms and relief from any court, these victims would be required to obtain relief through a civil action in district court under Title 27, the civil injunctions statutes. And even if that were not an impediment to obtaining relief, we feel that is important to recognize this behavior for what it is, domestic violence, and to treat it as domestic violence for purposes of the relief available, including counseling for abusers, and for reporting.

The broader classes of those protected are repeated in Section 2 of the bill, which is the crime of domestic abuse. Again, categorizing the offense of assault among these classes of people calls the crime what it is, domestic violence, and provides for application of the counseling requirement of this statute. Again, the crime will be reported as domestic abuse.

The second group of amendments speak to the need to focus on the behavior of the offender. Since 1989, when convicted of domestic abuse, the offender must complete at least a six month counseling course, totaling at least 25 hours. Obviously, the offender must receive a sentence that holds him subject to the jurisdiction of the court for six months in order for this to work. A problem has arisen though in that due to the demands for counseling or the offender's failing to attend all classes, the six months sentence may expire before even this minimum counseling is completed. To allow time for at least the minimum course of counseling to be completed we have suggested lengthening the maximum sentence to one year for the first or second offense. In this way an offender could be subject to the court's jurisdiction for the length of time necessary to complete the minimum counseling.

In addition to the ability to provide for a longer sentence, it is also important that a court receive recommendations from the counselor as to any necessary follow-up. The language in subsection (4) (c) on page 5, requires the counselor to make the recommendations which the court may then consider and may choose, based on those recommendations, to order additional counseling. Again, it would be important for the offender to have received a long enough sentence, whether it be deferred or suspended, to be subject to the court's jurisdiction during any period of additional counseling. These provisions are intended to further address the root of the problem, the offender's behavior, which, if not altered, will result a continuation of the cycle of violence in that family or relationship, rising demand for services of domestic violence shelters for his victims, and increased demand on AFDC and medicaid.

Counseling is also added to the list of relief a victim may obtain in a restraining order.

We urge your support of SB 406.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 9
DATE 2-19-93
BILL NO. SB406

RE: Testimony - SB 406

FROM: Janet Cahill, Director, Violence Free Crisis Line, Kalispell, MT

Management Team, Montana Coalition Against Domestic Violence

In the twelve (12) years that I have been providing services to battered women and their children, I have seen the problem of domestic violence grow at an alarming rate. In my program the number of new cases increased 75% between 1989 and 1992. We used to ask why women would stay in an abusive relationship. Now we know that it is frequently more dangerous to leave than to stay. More women are killed when attempting to leave than if they stay. Nationally, over 4,000 women each year are killed. We don't know about these deaths in Montana because they are lumped in with all other homicides.

Some women do try to leave even at great risk. They usually go to shelters for assistance. According to statistics from 16 programs who provide victim services in Montana, shelter was provided to 533 women and 3,058 children for a total of 12,043 nights in 1992. 180 women were turned away because of being overcrowded or having lack of funds to provide services. 9,404 persons sought services as a result of domestic violence.

Since 1985 domestic abuse has been a crime. We have finally held offenders accountable for their actions. But in order to prevent the everincreasing costs to society and particularly to Montana in health care, job loss, victims services, and counseling, we must continue to see that treatment services are offered and are effective. We must continue to emphasize that offenders must change their behavior. Because treatment became mandated in 1989, many programs to provide

these services became available. Professionals trained to provide services specifically directed at changing this behavior are available in most areas. However, they have become overwhelmed with the number of referrals. This results in a waiting period for offenders to enter the program. Because the courts only have jurisdiction over offenders for six months, some have not completed the program. It is highly probable that these offenders will reoffend. With an extension of the jurisdiction to one (1) year, offenders will be able to complete treatment. In addition, in 60% of the cases there is also substance abuse. The treatment provider will then have the option of recommending substance abuse treatment as well.

100% of children in homes where domestic violence occurs are affected by witnessing the abuse. The most alarming effect is modelling the violent behavior. Children as young as 2 have been observed mimicking strangling on their infant siblings. This behavior is acted out in the family as well. Adolescents become at risk for violent crimes, teenage pregnancy and substance abuse. Adolescents also model violent behavior in their relationships. Dating violence is exploding as a serious component of domestic violence. We must include other family and relationship violence in this crime. We can prevent the geometric increase of this problem by holding young offenders accountable as well and offering them an opportunity to learn alternatives to violence before they become a greater cost to society as adults.

The Montana Coalition Against Domestic Violence encourages you to support passage of this important legislation.

EXHIBIT NO. 10
DATE 2-19-93
BILL NO. SB406

TESTIMONY IN SUPPORT OF SENATE BILL 406

Dear Members of the Senate Judiciary Committee:

I want to register my support of this bill. Extension of protection to family members via a Temporary Restraining Order would have helped me in my own personal situation where my ex harassingly called my parents and other family members and friends in an attempt to make contact with me. If my Restraining Order had included my family members, he could have been found in violation of the order, even though I am not convinced that anything would have been done about it. This man has threatened to kidnap our son, and threaten my livelihood. He is [illegible] everyone in the legal system has told me that unless [illegible] actually does something, threats are meaningless and do not constitute grounds for charges. I have been dismissed by Parole and Probation, Region III director, Mike Gersack, hysterical and unprofessional. As I pointed out to Mr. Gersack, until one is on the ground getting their head kicked in, you cannot really know how frightening the situation is.

Charges are currently pending against him for domestic abuse for the incident that caused me to leave him, but so far, the case has not proceeded beyond the actual charging. In this vein, I also support an extension of the penalty from six months to one year although, again, I am not convinced that it will make any difference in practice because when these guys are found guilty and convicted, the six months sentence is imposed with all but a certain number of days suspended. If the sentence is extended, and some kind of counseling is ordered, the extension will allow time

for completion of any ordered program and jurisdiction remains with the court until that counseling is completed.

I am discouraged and disillusioned with a system that allows a family member to beat another and it is only a misdemeanor until the perpetrator commits the crime three times, but if a stranger beats another stranger, it can be a felony the first time. This does not make sense to me. My question to the system and you as law makers is, how many people have to die or be forever disabled as Leslie Miller has been. Please do whatever it takes to stop the violence.

Sincerely,

Melody K. Brown

Melody K. Brown

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Senator Bill Yellowtail, on February 19, 1993, at 5:30 p.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	NONE
Executive Action:	SB 336
	SB 349
	SB 323
	SB 397
	SB 368
	SB 406
	SJR 13

EXECUTIVE ACTION ON SB 271

Discussion:
Senator Halligan told the Committee that SB 271 should be

Senator Grosfield told the Committee an administrative act was the biggest area of liability.

Senator Towe WITHDREW his Do Not Pass motion for SB 400.

Motion:
Senator Towe moved to TABLE SB 400.

Vote:
The motion to TABLE TIED by a Roll Call Vote.

Discussion:
Chair Yellowtail asked Senator Grosfield to work on amendments for SB 400 so action can be taken at a later date.

EXECUTIVE ACTION ON SB 406

Motion:
Senator Bartlett moved SB 406 DO PASS.

Discussion:
Senator Towe asked Senator Bartlett about a permanent injunction. Senator Bartlett replied that judges probably would not issue permanent injunctions against a parent, unless there was extensive abuse and the judge feared for the wife or children's lives.

Senator Crippen told the Committee that SB 406 was a good bill.

Vote:
The Do Pass motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 336

Discussion:
Senator Crippen said the Governor and the elected officials do not receive raises automatically.

Motion:
Chair Yellowtail moved SB 336 DO PASS AS AMENDED.

Discussion:
Ms. Lane reminded the Committee they adopted two sets of

ROLL CALL

SENATE COMMITTEE Judiciary DATE 2-19-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

February 20, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 406 (first reading copy -- white), respectfully report that Senate Bill No. 406 do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

m — Amd. Coord.
— Sec. of Senate

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MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG,** on March 17, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: Rep. Karyl Winslow (R)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 406, SB 323, SB 179, SB 264, SB 344
Executive Action: SB 37

HEARING ON SB 406

Opening Statement by Sponsor:

SEN. SUE BARTLETT, Senate District 23, Helena, said that SB 406 expands the temporary restraining order laws and the criminal laws that protect persons against domestic abuse.

She said that Section 1 extends restraining orders to a broader

class of people, i.e. family members, those who have had dating or intimate relationships and cohabitation; in current law, temporary restraining orders are only available to individuals who have been married or who are cohabiting or have cohabited. Section 1 would make it clear that a person receiving a restraining order may also be restrained, but only if that person is found to use abusive behavior. It provides a definition for bodily injury similar to other criminal statutes. Section 2 deals with the provisions of domestic abuse.

Proponents' Testimony:

Judy Wang, Assistant City Attorney, City of Missoula, submitted written testimony. **EXHIBITS 1, 1A through 1E and 2**

Janet Cahill, Montana Coalition Against Domestic Violence, said that domestic violence has increased 75 percent and that over 4,000 women are helped annually nationwide. Some women choose not to leave a violent situation because it's more frightening for them to leave the relationship then stay. All children are affected by their parents' violent behavior, some as young as two years old.

Amy Pfeifer, Chairman, Women's Law Section, State Bar of Montana, presented written testimony. **EXHIBIT 3**

Craig Hoppe, Montana Magistrates Association (MMA), said the MMA supports this bill but doesn't believe that six months jurisdiction is adequate treatment time for the abuser.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. TASH asked **Ms. Pfeifer** why domestic abuse laws aren't applicable to assault law and whether, if the perpetrator is charged under the assault laws, he is expected to go through domestic counseling. **Ms. Pfeifer** said in many cases they are. One of the reasons for this bill is to treat the parties involved under the domestic violence statute to stop the cycle of abuse in the family relationship. Regular assault doesn't have the minimum counseling requirement, whereas in domestic violence there is a minimum counseling requirement.

REP. TOOLE referred to page 5, lines 4-7 and said the ramification of temporary orders has been changed; by deleting the words "before final decree," this bill is allowing modification of temporary orders by affidavit on a permanent basis. Affidavit procedure is a lot different from most hearings, and he asked **Ms. Pfeifer** what the intent is. **Ms. Pfeifer** said the intent is to file an affidavit and follow up

with a hearing. Part of the problem is that current language doesn't cover a temporary restraining order (TRO) as covered in Department of Family Services (DFS) statutes. The language needs to be cleaned up to cover marriage and divorce situations.

REP. RICE referred to page 4, subsection 9, and asked **Ms. Wang** if that provision ties into the provision of domestic abuse statute as described in subsection (3)(a). **Ms. Wang** said many TROs don't hold domestic abuse charges; generally, they're grounds for domestic abuse charges. She said it's possible a TRO could have been used in the past.

Closing by Sponsor: None

HEARING ON SB 323

Opening Statement by Sponsor:

SEN. B. F. CHRISTIAENS, Senate District 18, Great Falls, addressed several new areas in the bill. On page 2, line 14, the word "youthful" was struck in the Senate Judiciary Committee, and on line 18, instead of 5 years, it should read 1 year. Also, page 2, lines 21-23 have been deleted from bill.

This bill is a new idea in Montana corrections. There are "boot camps" already in existence in other states; the state of Wyoming has had boot camp operations for the past two years, and the successes of that program are just coming forward. Probably about 72 percent who have gone through boot camp have remained out of prison for over one year; nationwide, the average of people leaving prisons is at about an 85 percent recidivism.

This Shock Incarceration center would be located at the Swan River Forest Camp and would have a great deal of emphasis on discipline, physical exercise, building up self-esteem. Young first-time incarcerated individuals would be sentenced there. They would later be reviewed and sent to a Pre-Release Center before being paroled back out into the communities. **SEN. CHRISTIAENS** showed a tape on the boot camp in Wyoming to give the committee a better understanding of the camp and its intent.

Proponents' Testimony:

Jim Pomroy, Department of Corrections and Human Services (DCHS). added that the boot camp would be a 120-day program. In talking to staffs of boot camps around the country, one of the things that **Mr. Pomroy** feels is lacking is the follow-up of boot camp experience. People go through a very rigid structured program, and they do feel good about themselves; then they're dropped back onto the streets and into the neighborhoods from which they came. Following boot camp, **DCHS** would like to send inmates to the Pre-

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 3-17-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

HR:1993
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EXHIBIT 1
DATE 3-17-93
SB 406

TESTIMONY OF JUDY WANG
ASSISTANT CITY ATTORNEY, CITY OF MISSOULA

Date: March 17, 1993

Forum: House Judiciary Committee

Topic: Senate Bill 406

INTRODUCTION

Domestic violence occurs between family members and in partner relationships. The stronger, more controlling person in the relationship preys upon the weaker person with physical abuse and/or emotional terrorism. The abuser has easy access to the victim because of many bonds including finances, emotions and legal relationships. Domestic violence laws are enacted primarily for victim protection. The secondary purpose of domestic violence laws is to treat and punish abusers.

Montana's laws concerning domestic violence need to be amended to provide family and partner violence victims protection under these statutes. Additionally, the amendments in Senate Bill 406 provide an opportunity for better intervention with abusers. Better intervention may decrease the likelihood that the abuser will re-offend.

TEMPORARY RESTRAINING ORDERS

Three general changes are proposed to amend the temporary restraining order statute. First, the definition of persons who are eligible to apply for a restraining order is amended to include presently excluded partners and family members. Secondly, changes

are proposed in regards to how long an abuser may be restrained by a temporary restraining order and who may be restrained by the order. An amendment is proposed which will allow judges to grant permanent restraining orders if the facts warrant such an order. Finally, the proposed changes will allow a judge to direct a party before the judge on a temporary restraining order to complete alcohol or other counseling if that is appropriate.

PERSONS ELIGIBLE

Under the TRO statute as it is presently enacted, the only persons eligible for temporary restraining order protections are spouses, former spouses, persons "cohabitating" or persons who have "cohabitated" within the last year. Thus, a mother, injured by a violent son, cannot obtain a temporary restraining order to exclude him from the household. A daughter, an incest victim by her stepfather, cannot seek protection under Montana's temporary restraining order laws as they are presently drafted. A woman who has parented children with her partner, but never set up one household with him, is not eligible for temporary restraining order protections even though he has injured her. Clearly, all three examples demonstrate victims who need protection from their abusers. Under the present definitions, however, none of those three persons may seek temporary restraining orders.

The proposed definitions add family members and partners as persons eligible for these protections. If the proposals are adopted the victims in the above circumstances could apply for temporary restraining orders.

EXHIBIT #1
DATE 3-17-93
SB-406

MUTUAL TRO'S

Under the laws as they are presently drafted, many judges regularly issue "mutual" restraining orders. These judges order the victim to follow the same conditions and restrictions as are placed on the abuser. The problem with a "mutual" restraining order is that generally the victim has not been violent and does not present any danger to the abuser. Once the restraining order has been made "mutual" the victim is criminally culpable for TRO violations. The victim, who has not been violent, is placed under the same restrictions as the abuser. That simply isn't fair.

Under Senate Bill 406 judges could order that restraining orders are mutual in effect only under certain circumstances. The judge must find as fact that both the petitioner and the respondent were violent or made serious threats of violence. If the judge finds as fact that both parties were violent or threatened violence, the judge may make the restraining order mutual in effect.

DURATION OF TRO

Senate Bill 406 clarifies who may renew a restraining order and provides that a judge may order the restraining order to be in effect permanently, should the facts call for a permanent restraining order.

Under the present statutory framework, only persons who have been married to their abuser may return to the court for a second one year restraining order. A victim who lived with her abuser but had not married him may only seek a one year restraining order

under current Montana law. At the end of that year, even if there were many violations of the TRO during the one year time span, she or he cannot return for an additional temporary restraining order. As the amendments are proposed, all victims who are eligible for a temporary restraining order may return for an additional restraining order after the initial restraining order has expired.

If the judge finds as fact that the violence is so severe that a permanent injunction is necessary, the judge may order that the injunction remain in effect permanently. While it may not appear to be an imposition to require the petitioner to return on a yearly basis to obtain another restraining order, that may not be the case. Frequently victims who seek restraining orders are terrified of their abuser. Often the threats and the abuse escalate if the victim seeks any kind of help at all. Threats may include "if you ever get a restraining order I'll kill you." A temporary restraining order hearing, by definition, requires the victim to confront his or her abuser. It is a stressful situation, time consuming and actually subjects the victim to potentially more violence. Under the amendments, one temporary restraining order hearing would be all that is required to enjoin an incredibly violent person from harassing their victim permanently.

This revision eliminates a problem that occurred in Missoula County within the last year. In the course of granting a divorce, some district court judges have ordered an abusive spouse to permanently stay away from their victim. Unfortunately, there isn't clear statutory authority for the impact of such an order.

EXHIBIT #1
DATE 3-17-93
SB-406

A divorce decree violation does not carry criminal penalties which follow a violation of a temporary restraining order. Thus, the only remedy for violation of a permanent divorce decree injunction is contempt of court. Peace officers are not ordered to prefer to arrest when investigating a divorce decree violation case. The proposed modifications to the temporary restraining order statute eliminate those problems.

COUNSELING

Frequently a person who seeks a temporary restraining order does not also press criminal charges. Often one party in a TRO has severe problems which counseling may help. Under the temporary restraining order statute as modified by Senate Bill 406, judges could order a party to a temporary restraining order to complete counseling.

DOMESTIC ABUSE STATUTE

Four basic changes to the domestic abuse statute are proposed in Senate Bill 406. The definitions of victims protected are changed to include more family members and partners as eligible for protections. Secondly, the offense category of negligent injury with a weapon is added, to make the domestic abuse statute more consistent with the assault statute. The proposal provides for potentially enhanced penalties, up to one year maximum incarceration for first and second time offenders and a minimum incarceration of 10 days for a third offense domestic abuser. Finally the amendments address the problem presented by an abuser with severe emotional and/or chemical dependency problems that

cannot be resolved within 25 hours of counseling.

PERSONS ELIGIBLE

Under the temporary restraining order statute and the domestic abuse law as they are currently enacted, persons eligible for the protections offered by those laws are defined differently. Thus, an adult daughter who is abused by her father could have domestic abuse charges pressed against her father but would not be eligible for the protections provided under Montana's temporary restraining order statute. The proposed amendment provides identical family member and partner definitions in the TRO and domestic abuse statutes. The definitions, as proposed, will include family members of the household and persons who have been involved in an ongoing dating or intimate relationship. Under the new definitions, previously excluded victims, such as women who have had children with their abuser but have not set up a common household with the abuser, will now be covered by the protections offered under these laws.

NEGLIGENT INJURY WITH A WEAPON

Montana's assault statute, Mont. Code Ann. § 45-5-201 (1991), prohibits negligently injuring another with a weapon. That offense subsection is not presently included in Montana's domestic abuse statute. Thus, negligently injuring a stranger with a weapon is an offense. If you negligently injured a family member or partner with a weapon that assault would not be a domestic abuse. That is a nonsensical distinction. Because of the inconsistency between the assault and domestic abuse statute, Senate Bill 406 includes

EXHIBIT #1
DATE 3-17-93
SB-406

negligent injury with a weapon as an offense to Montana's domestic abuse law.

PENALTIES

The proposal changes the maximum and minimum penalties for first and third time domestic abuse offenders.

Under the present law, the maximum sentence that can be given to a first or second time offender is six months incarceration. Frequently, these offenders are sentenced to six months incarceration, the incarceration suspended provided that the abuser follow a number of conditions. The conditions must include at least 25 hours of domestic violence counseling. In some locations in Montana there is a long waiting period before counseling can be started. Many abusers are resistent to counseling and delay enrollment in counseling for a number of months. With a maximum suspended sentence time period of six months, frequently the abuser does not fully complete the required counseling. The amendment is designed to allow the court to maintain jurisdiction over the abuser for up to one year.

The amendments define a minimum sentence of incarceration upon a third offense conviction. Once an abuser has been convicted on three domestic abuse charges, ten days incarceration is proposed as the minimum incarceration.

COUNSELING

Often during counseling, the abuser's counselor learns that the abuser has significant emotional problems. Many abusers have severe violence problems which require far more than twenty five

EXHIBIT #1
DATE 3-17-93
SB-406

hours of counseling to treat. Other abusers have alcohol problems and/or severe substance abuse issues. This proposal provides for a referral back to the court if the abuser's counselor determines that an abuser has mental health issues that require additional counseling beyond the minimum twenty-five hours. As the statute is currently enacted, an abuser with additional problems simply has those problems unaddressed.

CONCLUSION

A large number of family members and partner victims are not protected by Montana's current domestic abuse laws. These laws need to be revised so that family member and partner victims are eligible for these protections. The proposed revisions will provide courts with a stronger tools to enforce needed counseling and appropriate restrictions on abusers.

EXHIBIT #1A
DATE 3-17-93
SB 406

February 17, 1993

Dear Ms. Bartlett,

I am writing in support of Senate Bill 406. I hope that my story will help.

I was once in a romantic relationship with a man. We had been dating for a couple of years, but had never lived together. We broke up and would get back together off and on during these two years. It was a very rocky relationship.

The last break up we had I would not let him back into my life. One morning, about a month after we had quit dating, he called me and wanted to come over to talk, which he frequently did. I always thought it was better to let him talk out whatever he needed to rather than to make him angry. I told him I would be home all day.

In a half-hour he was there. I was still in bed. The back door was unlocked because it was still early and my kids had stayed the night with some friends, and I wanted them to be able to just come in the house when they got home. He walked right in. He came into my bedroom, and asked me where I had been the night before. I told him that I had gone out with some friends. He then accused me of sleeping around with other men. I told him I wasn't seeing anyone, but even if I were it wasn't any of his business because we were broke up. At this point we were standing face to face arguing. I saw him make a fist and swing back to hit me. My thoughts were that he really didn't mean to do this to me. He knocked me down, I got back up, trying to reason with him. He did it again, I got back up, and this went on three or four more times. Finally, I figured that if I just stayed down he wouldn't hit me again. Thats when he started kicking me in the stomach and chest. I will never forget the humiliation and pain that I felt. He finally left and on his way out he was destroying any object that he could get his hands on. I called a friend and she came right over. At this point I wanted to forget everything.

He still wouldn't stay out of my life. He would call up my oldest son, then thirteen years old. He would talk to him and make plans to go fishing. I would tell him to leave us alone, to no avail. Two or three days later I ended up going to the police and pressing charges. The bruises were still very much there.

The trial would end up being six months later. During the time I was waiting for it I would receive hang up phone calls, notes, and other signs that he would leave just to let me know that he had been around there. He would follow me to work, follow my friends around, follow me any time I was in my car. He would borrow vehicles from other people to follow me in. He would call my work, and once he even yelled obscenities at me at a restaurant. Whenever I would see him I would call the police. I would not be in their records, there was no restraining order against him on me because we were never married or lived together. According to the police it was not domestic abuse. There was not much they could do for me unless he attacked me again. Basically, he could follow me around, torment me and I had to live with it.

We finally came to the trial date. He was found guilty of the assault. Although I wasn't the first woman he abused, I was the first one who had pressed charges. His punishment was a one year deferred sentence.

Enduring the humiliation of the assault, and feeling helpless is something that I hope I never have to live through again. All I gotten was beaten, followed and tormented. I do not wish it upon anybody to go through anything like that. To feel so completely powerless is not freedom. I hope that Senate Bill 406 passes.

Thank you for listening to my story. I hope that if nothing more my experience helps protect the victims. I am withholding my name for fear that he may find out about this letter and he may start all over again

Sincerely,

D.F.

D.F.

EXHIBIT 1B
DATE 3-17-93
SB 406

Joseph Scalia III, M.Ed., CCMHC
300 N. Willson Ave., Ste. 3000
Bozeman, Montana 59715

Psychotherapy
Bozeman Medical Arts C
(406) 586-0870

March 12, 1993

Regarding: Senate Bill 406
House Judiciary Committee Hearing

Dear Committee Members,

As a practicing psychotherapist for the past fourteen years and as therapist for the past three-plus years leading groups for men court-ordered to domestic violence counseling and also bringing the experience of treating these men in more individualized and non-time-limited therapy, I have considerable background out of which to comment on certain aspects of SB 406.

From a clinical perspective, the existing mandated 25 hours of treatment is quite inadequate. In fact, my opinion is specific and clear regarding what is needed clinically. Ideally, these services would only be provided by the most experienced and poised licensed mental health professionals. Comprehensive personality assessments would be conducted and treatment recommendations would only then be made. Typically, when treatment would be recommended, quite long-term treatment would be needed. The imparting of cognitive components to the patient is relatively easy and uncomplicated. However, addressing and altering the deep personality attributes which complicate the patient's implementing the cognitive -- it is herein that we find the need for a much more depth-oriented and extensive treatment than existing laws allow for.

While I would see the licensed therapist being allowed the clinical autonomy to determine treatment length as prognostically more favorable, SB 406's provision for the therapist to have the referring court consider his recommendation for some additional treatment after the completion of the first 25 hours -- that would certainly be a considerable improvement over the present situation. The provision that the therapist could also recommend chemical dependency treatment when needed would also be an improvement. Any change in the law which would allow the licensed clinician greater determination of the course of treatment would make for improved prognoses for batterers and their intimate others.

Thank you for your consideration of these matters.

Respectfully,

Joseph Scalia III, M.Ed., CCMHC
Licensed Professional Counselor

EXHIBIT #1C
DATE 3-17-93
SB 406

FORUM: HOUSE JUDICIARY COMMITTEE

TOPIC: SENATE BILL 406

DATE: MARCH 17, 1993

In my position as the Crime Victims Advocate in Missoula County, I estimate that 75% of my work deals with victims of domestic violence. It has been my experience that the statute as presently written is, in many cases, inadequate in providing the abused victim the protection needed.

I have two areas of specific concern. One is the need for the definition of family member to be changed as proposed in Senate Bill 406. Very often I deal with victims in an abusive dating relationship with most of the conditions necessary to obtain a temporary restraining order present. The missing qualification is usually found in the "living together" clause. The problem is, their lives are no less in danger than the lives of those who do live in the same household, and yet, very little can be offered to them in the way of protection.

My second area of concern has to do with the present number of hours required for the abuser to attend anger control counseling. It is most often impossible for an abusive person to make any long term behavioral changes in 25 weeks, and it is misleading for the victims of violence to believe that upon completion of the classes the behavior has been eliminated.

Based on my observations over the 2 1/2 years in my present position, I feel it is imperative for Senate Bill 406 to be passed and to include the changes as written.

Anne Archibald

Ann Archibald
Crime Victims Advocate

EXHIBIT 10
DATE 3-17-93
SB 406

YWCA

1130 West Broadway
Missoula, MT 59802
(406) 543-6691

March 15, 993

House Judicial Committee:

The YWCA Domestic Violence Assistance Center of Missoula fully supports SB 406. From our experiences with battered women and children, we believe the state of Montana needs to do all it can to protect victims of domestic violence. The following statistics show how immense the problem of domestic violence is: At least 1.8 million women will be battered this year. (FBI) Battering is the single major cause of death to women. More women enter emergency rooms for injuries as the result of battering than auto accidents, muggings and rapes combined. (Surgeon General, 1984).

We believe that SB 406 is an important step in protecting domestic violence victims against violent crime. We encourage each of you to support SB 406. Thank you.

Sincerely,

Keeley Titus

Keeley Titus

Kelly Slattery-Robinson

Kelly Slattery-Robinson

Anita Coryell

Anita Coryell

March 16, 1993

EXHIBIT 1E
DATE 3-17-93
SB 406

To. House Judiciary Committee
RE: Domestic Abuse

For the longest time, I've struggled through the system, determined to exercise my right, as a human being, to live in peace and in safety. Not just for myself, [redacted], but for my children as well.

During this struggle I have found that, yes, we do have a system, but somewhere along the way, we lost what this "system" was designed to provide for each man, woman, and child. I have found there is no justice. And justice is what I and my children have a right to expect as victims of a world we didn't create.

We can't change what's happened in the past. But the present and the future are another story. Everything has a beginning. Everything has an ending. Now is the time to stop victimizing the victims and start granting justice where justice is deserved and should be expected by us all.

For almost a year, I was beaten, sodomized, and brutally raped 3-4 times a week. I was threatened that if I left, he would find me. I believe he would kill me when he did, and several times he came close.

Have you ~~ever~~ heard the sound of your own neck beginning to snap? Have you ever felt the intense pain and pressure and Throbbing of your swollen-bruised head after it has been pounded

mercilously on a hardwood floor, hearing
the "thud", feeling the blunt driving force of
mother's hand hurtling your cries,
pleas, feelings, your heart and your
soul through space and time.

And in that space and time, I was
praying, desperately hoping the someone,
somehow, somewhere would stop it. Someone,
somehow, somewhere would find a way to
make it alright. Someone never came,
somehow no one heard my screams,
somewhere, somewhere we lost justice.
For some twisted, unknown reason, he
was never punished. Oh, maybe 2 days
in jail, served at his convenience, and
little counseling here and there. But
I was sentenced to life with a chemical
imbalance in my brain, to migraine
headaches, to a back and hip so badly
injured, I am no longer able to run,
without extreme pain. But worst of all,
I was sentenced to a life of bad dreams,
horrible nightmares and a sense of distrust
so strong that sometimes I wondered if life
was worth living at all.

And do you know what the stinger
in the whole thing was? I was unable
to obtain a divorce from this animal for
years. And if I wanted to remain
somewhat protected, I had to show up
in court, with all facts presented
and known for quite sometime, to be
badgered, to be humiliated again

EXHIBIT 21
DATE 3-17-93
SB 406

March 12, 1993
Missoula, Montana

Honorable Judiciary Committee
RE: Senate Bill 406
State of Montana

Dear Committee Members:

It is with feelings of intense sadness prompted by immobilizing fear that I need to address you today. Several years ago I considered myself a fun-loving, easy going, forgiving, compliant professional person. Today I live the challenging life of a single parent with two young children, working full time, thankful to my Heavenly Father, and I have survived an abusive relationship with my ex. My energies are often low, my daily routine is a process of prioritizing needs, starting of course with the two greatest gifts I will have ever received, my sweet little ones. There are times when I can hardly bear the knowledge, the awareness that my children have been subjected to the atrocious, out of control / out of mind behavior of their father, that their sweet innocence has been violated in their infancy, yet even then, my son of four years old at the time said to me - "Mom, I think I know what's wrong with Dad... I think he has an "owie" in his brain, that's why he hurt you... maybe it would help if he would talk about it and get it out of his brain... then maybe he would feel better and not hurt you."

So what is my purpose, my intent here? I could tell many stories that would horrify and shock even the hardest. I have no need to shock and horrify. But if I can help convince you that sometimes even strong, self assured persons arrive desperate in situations that are potentially or actually lethal, and that there are some things that can be done to prevent fatalities or physical or emotional disorders, then I do feel the need to speak.

Domestic Violence is an dark, deep, ugly, secretive, insidious, cancerous of our emotional fabric that turns its victims with slithering stealth and skill and devours its prey repeatedly and inevitably. I often asked myself how

could I have been so stupid to have fallen for his crazy ploys? Easy. A few basic character ingredients are necessary. I trusted. I believed. I forgave. I did all the things that my family, my religion, my society said I should do — and I nearly died for it. I nearly died believing the words "I'll never do it again... you mean everything to me... I couldn't live with myself knowing that I'd ever hurt you again... Please forgive me... let's start over..." How could a man regarded by his professional peers as "dedicated, hard-working, kind, sensitive, humorous" turn into such a monster on the homefront? Who is this man of duel personality - so easy to love, so easy to fear?

I believe that my son, at his tender age understands the core of this complicated issue as well as any of us. I believe that there is an internal "cure" in need of intentional care and support before the symptoms or behavior can ever be changed. And given that fact, I believe that I must do what ever is possible to protect my children and myself until that need is satisfied. Respectfully, I present my request to have my plea to pass unequivocally Senate Bill 406. In fact, I believe this is just a very small step in the right direction of offering built in increased safety for the victims of domestic violence, and more help for those who model this perpetrating behavior.

I strongly support Senate Bill 406 in extending jurisdiction of the court for first time offenders up to one year. I feel that offenders need to be dealt with seriously and dramatically, that offenders need a very clear message — that their behavior is criminal, inappropriate and will not be tolerated by our society or our court system. The counseling presently ordered by the judiciary is a good start - but unfortunately it is only that. How can we expect behavior that has very possibly been a lifelong pattern be changed in a mere 26 hours? And, I would like to see the option of a permanent restraining order become a reality. If a person has been physically harmed, or threatened with the same - why continue to allow a potentially lethal crisis to sit unattended? And why should victims again & again, and again need to beg the courts for protection for themselves and/or their children? My experience thus far has been that the renewal of the restraining order only tends to incite the anger once again both my offender and his family - who protects him.

I feel that it is a crime — that the message virus lived and cultured that violence towards family members is not ok. Ofcourse because it's family. There should be "no closed doors", no closed ears when it comes to a call for help from women (or men) and children who are victims of physical, emotional or mental abuse within the home. Responding appropriately to domestic violence is an ethical imperative: awareness, openness, responsibility.

Please listen with openness, with sensitivity to the testimony presented today. Please hear what Cindy Wang is telling you - Cindy has been a God-send to my self, my children and our community due to her astute awareness of domestic violence issues, her support of women and children in crisis, the seemingly endless energy she infuses into community consciousness-raising, education and support of our law enforcement who on a moments notice put their lives on the line to protect & preserve our basic freedoms. Cindy brings the human element respect from those who work with her, as well as the many persons touched by her. Because Cindy genuinely cares about the causes she invests in...

I would like to close with a few lines from some of my own journaling after a near lethal assault from my ex (who was not arrested in my best interest by the responding officer) My fear was of course that he might be successful on next encounter). Starting with a well known verse "... and if I die before I wake..." - will someone please lobby to improve the domestic violence laws in this country so that women and children need not fear dying at the hands of those who supposedly love them... It's a whole lot nicer to be home to say it myself. Please help me to know it that way.

DATE 3-17-93
SB 406

WOMEN'S LAW SECTION

STATE BAR OF MONTANA

To: Chairman Rep. Russell Fagg and members of House Judiciary Committee

From: K. Amy Pfeifer, Chair, Women's Law Section, State Bar of Montana

Re: SB 406 - Expand Domestic Abuse Laws to Other Persons

Date: March 17, 1993

The Women's Law Section of the State Bar of Montana urges your support of SB 406. I speak on behalf of the Section and not the State Bar of Montana.

Our Section has a continuing interest in the protection of this state's victims of violence, particularly in the area of domestic and sexual abuse. We believe the amendments to the domestic violence protection statutes that you have before you today will work strengthen the relief available to victims of violence, particularly the women and children of this state. We have worked with the Montana Coalition Against Domestic Violence to bring these amendments to your attention.

The amendments are fairly simple. First, we wish to broaden the class of individuals that may petition for a domestic violence restraining order under 40-4-121. As some of you may know, this statute, and the procedural statutes which follow it, allow victims of domestic violence to obtain forms from district, city, municipal and justice courts to petition those courts, generally pro se, for protection from their abuser. Much of the current law stems from extensive amendments to this section in 1985. The current language allows spouses, former spouses and persons who are or have cohabited within the last year to apply for relief under this section. As I am sure you are all aware, a couple does not have to have lived together to have a child in common or to be parties to an abusive relationship. That is the reason for the definition of partner: the cohabitation requirement is gone.

Family member is defined to include parents and children, including relationships created by adoption or step families. Children learn behaviors from their parents, and children go on to become abusers and victims. Teenage sons model their father's behaviors and abuse their mothers, fathers may abuse their daughters. Without an

ability to receive a restraining order under this statute, which allows them to obtain forms and relief from any court, these victims would be required to obtain relief through a civil action in district court under Title 27, the civil injunctions statutes. And even if that were not an impediment to obtaining relief, we feel that is important to recognize this behavior for what it is, domestic violence, and to treat it as domestic violence for purposes of the relief available, including counseling for abusers, and for reporting.

The broader classes of those protected are repeated in Section 2 of the bill, which is the crime of domestic abuse. Again, categorizing the offense of assault among these classes of people calls the crime what it is, domestic violence, and provides for application of the counseling requirement of this statute. Again, the crime will be reported as domestic abuse.

The second group of amendments speak to the need to focus on the behavior of the offender. Since 1989, when convicted of domestic abuse, the offender must complete at least a six month counseling course, totaling at least 25 hours. Obviously, the offender must receive a sentence that holds him subject to the jurisdiction of the court for six months in order for this to work. A problem has arisen though in that due to the demands for counseling or the offender's failing to attend all classes, the six months sentence may expire before even this minimum counseling is completed. To allow time for at least the minimum course of counseling to be completed we have suggested lengthening the maximum sentence to one year for the first or second offense. In this way an offender could be subject to the court's jurisdiction for the length of time necessary to complete the minimum counseling.

In addition to the ability to provide for a longer sentence, it is also important that a court receive recommendations from the counselor as to any necessary follow-up. The language in subsection (4) (c) on page 5, requires the counselor to make the recommendations which the court may then consider and may choose, based on those recommendations, to order additional counseling. Again, it would be important for the offender to have received a long enough sentence, whether it be deferred or suspended, to be subject to the court's jurisdiction during any period of additional counseling. These provisions are intended to further address the root of the problem, the offender's behavior, which, if not altered, will result a continuation of the cycle of violence in that family or relationship, rising demand for services of domestic violence shelters for his victims, and increased demand on AFDC and medicaid.

Counseling is also added to the list of relief a victim may obtain in a restraining order.

We urge your support of SB 406.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 406

DATE March 17, 1993 SPONSOR(S) S. Bartlett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ann Pfeifer	Women's Law Section of State Bar	X	
Janet Carroll	MT Coalition Against Domestic	X	
Judith Wang	Missoula City Attorney's Office and Missoula Criminal Defense Alliance	X	
[illegible]	Self	X	
Kellie Anderson	Women's Law Caucus	X	
Kate Cholewa	MT Women Lobby	✓	
Linda Coryczan	MT Women's Lobby	X	
Katie Dean	Women's Place, Missoula MT	X	
Kimiko Wang	Self	X	
Carrie Hahn	WOMEN'S LAW CAUCUS UM SCHOOL OF LAW	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 18, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 392, SB 371, SB 321, SB 408
Executive Action: SB 406, SB 344, SB 264, SB 153, SB 321

HEARING ON SB 392

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, said that this bill is one of a series of bills strengthening child support enforcement in the state of Montana. SB 392 provides seek-work orders; the department will be able to require people who owe

Closing by Sponsor:

SEN. CHRISTIAENS believes this is an important piece of legislation and a better way of attacking alleged abuse. He said that those with disabilities should live in homes with the least restrictive and most independent environment; law enforcement should work quickly when and if severe abuses are occurring.

EXECUTIVE ACTION ON SB 321

Motion/Vote: REP. WHALEN MOVED SB 321 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 406

Motion: REP. BROOKE MOVED SB 406 BE CONCURRED IN.

Motion/Vote: REP. VOGEL moved an amendment to insert on page 6, line 15 after the word "weapon": "During or otherwise in connection with a quarrel, fight, or abusive behavior." Amendment carried unanimously.

Motion: REP. BROWN MOVED SB 406 BE CONCURRED IN AS AMENDED.

Discussion:

REP. WHALEN referred to page 2, subpart (e). He wondered if it is necessary to have that type of provision in the TRO statute relating to dissolution procedure. **CHAIRMAN FAGG** spoke for **Ms. Pfeifer** and said she believes that's very important language. It gives the judge the option to order counseling in situations where he or she believes there is a chemical or alcohol problem. **CHAIRMAN FAGG'S** own feeling is that a judge would not do that unless it was a very extreme situation.

REP. WHALEN said he does not have a problem giving a judge that option, especially in abusive situations. However, this bill is referring to people who are involved in obtaining a divorce and that doesn't relate directly to an abusive situation. **REP. BROOKE** added this was an option for cases in which a judge believes there is an abusive relationship. Therefore, the judge can order the abuser to have counseling. She added that domestic violence doesn't end with the dissolution of marriage, but usually there's habitual abusive behavior that can be carried on.

In response to **REP. BROOKE'S** comment, **REP. WHALEN** said subsection (b) and (c) already contain, within the statute, issuance of a TRO. He said the bill is going beyond that by sending someone to counseling or rehabilitation. **REP. WHALEN** said that may be appropriate when referring to domestic abuse.

MR. MACMASTER said the domestic abuse statutes are already

amended in this bill on page 6 and 7.

Motion: **REP. WHALEN** offered an amendment to strike subsection (e), 44-121 subpart (2) on the basis that there's no criteria set forth for including these conditions on a TRO. This type of order can be a condition of a person receiving visitation rights.

Discussion:

REP. TOOLE believes the language must be kept in as an abusive clause. He said he thinks **REP. WHALEN'S** amendment puts restrictions on parties.

REP. RUSSELL agrees with **REP. TOOLE** that the bill needs the language. A real critical time is when people are on a temporary order or a temporary injunction.

REP. WHALEN closed on his amendment. Over the years he has seen the courts meddle in private family life, and that's justified, but this bill is giving blanket authority to a court in a dissolution proceeding to order these people for chemical dependency treatment.

Vote: **REP. WHALEN'S** concept amendment to allow only that counseling to be in visitation situations failed 15-2 with **CHAIRMAN FAGG, REPS. BROWN, BIRD, BERGMAN, BROOKE, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, SMITH, TASH, TOOLE,** and **WYATT** voting no. **REP. WINSLOW** was absent.

Motion: **REP. TOOLE** moved a concept amendment to allow the amendment on lines 4-7, page 5, be done without extending temporary orders to be changed by affidavit if the final decree is amended.

Discussion:

CHAIRMAN FAGG referred to line 6, page 5, and said modifications of final decrees are in current statute. **CHAIRMAN FAGG** assumed this means there will be modification of a final decree, and it's already by affidavit. **REP. TOOLE** said 40-4-208 requires an affidavit, and that's true for the timeframe before the final decree is issued. If the words "before final decree" are eliminated, that can be meant to extend the affidavit process to anytime including post decree situations.

REP. TOOLE said he has no desire to change the substance of the language. He does believe there's a technical problem with the language and will work on it and discuss it on the House floor.

Vote: **REP. TOOLE** withdrew his amendment in committee and will discuss it on the House floor.

Vote: **SB 406 BE CONCURRED IN AS AMENDED.** Motion carried 17-1. **REP. TASH** voted no.

HOUSE STANDING COMMITTEE REPORT

March 19, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 406 (third reading copy -- blue) be concurred in as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. Vogel

1. Page 6, line 15.
Following: "weapon"
Insert: "during or in connection with a quarrel, fight, or abusive behavior"

-END-

Committee Vote:
Yes 17, No 1.

621200SC.Hpf

SENATE BILL NO. 406

INTRODUCED BY BARTLETT

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE TEMPORARY RESTRAINING ORDER LAWS AND THE CRIMINAL LAWS THAT PROTECT PERSONS AGAINST DOMESTIC ABUSE; DEFINING "FAMILY MEMBER" FOR PURPOSES OF BOTH AREAS OF LAW; APPLYING BOTH AREAS OF LAW TO PARTNERS; DEFINING THE TERM "PARTNERS"; APPLYING THE PROTECTIONS IN THE TEMPORARY RESTRAINING ORDER LAWS TO ALL FAMILY MEMBERS; AND AMENDING SECTIONS 40-4-121, 45-5-206, 46-6-311, 46-6-602, AND 46-9-302, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-4-121, MCA, is amended to read:

"40-4-121. **Temporary order or temporary injunction.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for disposition of property or for maintenance or support following dissolution of the marriage by a court which lacked personal jurisdiction over the absent spouse, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion ~~shall~~ must be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.

(2) As a part of a motion for temporary maintenance or support or by independent motion accompanied by affidavit, either party may request the court to issue a temporary injunction for any of the following relief:

(a) restraining any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life and, if so restrained, requiring ~~him~~ the person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

(b) enjoining a party from molesting or disturbing the peace of the other party or of any ~~child~~ family member;

(c) excluding a party from the family home or from the home of the other party upon a showing that physical or emotional harm would otherwise result;

(d) enjoining a party from removing a child from the jurisdiction of the court; and

(e) ordering a party to complete counseling, including alcohol or chemical dependency counseling or treatment; and

~~(e)~~(f) providing other injunctive relief proper in the circumstances.

(3) A person may seek the relief provided for in subsection (2) ~~of--this--section~~ without filing a petition under this part for a dissolution of marriage or legal separation by filing a verified petition:

(a) alleging physical abuse, harm, or bodily injury

against the petitioner by a family ~~or--household~~ member or partner or the threat of physical abuse, harm, or bodily injury against the petitioner by a family ~~or--household~~ member or partner that causes the petitioner to reasonably believe that the offender has the present ability to execute the threat; and

(b) requesting relief under Title 27, chapter 19, part 3. Any ~~preliminary~~ temporary injunction entered under this subsection must be for a fixed period of time, not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as appropriate. Persons who may request relief under this subsection include ~~spouses, former spouses, and persons cohabiting or who have cohabited with the other party within 1 year immediately preceding the filing of the petition~~ family members or partners.

(4) The court may issue a temporary restraining order for a period not to exceed 20 days without requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that irreparable injury will result to the moving party if no order is issued until the time for responding has elapsed.

(5) A response may be filed within 20 days after service of notice of motion or at the time specified in the temporary restraining order.

(6) At the time of the hearing, the court shall

determine whether good cause exists for the injunction to continue for 1 year.

(7) If the court determines, on the basis of a party's history of violence and the testimony presented at the hearing OR ON THE BASIS OF CREDIBLE EVIDENCE THAT A PARTY HAS VIOLATED [SECTION 1 OF SENATE BILL NO. 37], that the other party needs permanent protection or may otherwise suffer permanent injury or harm, the court may order that the injunction be effective permanently.

(8) A permanent injunction may be issued by a district court with jurisdiction over the parties to a dissolution proceeding upon presentation of evidence of a party's history of violence showing that the other party may suffer permanent injury or harm if a permanent injunction is not issued. A PERMANENT INJUNCTION MAY ALSO BE ISSUED ENJOINING A PARTY FROM STALKING UPON PRESENTATION OF CREDIBLE EVIDENCE THAT THE PARTY HAS VIOLATED [SECTION 1 OF SENATE BILL NO. 37] IF THE COURT DETERMINES THAT THE STALKED PARTY NEEDS PERMANENT PROTECTION.

(9) Restraining EXCEPT WHEN THE ALLEGED CONDUCT TO BE RESTRAINED IS A VIOLATION OF [SECTION 1 OF SENATE BILL NO. 37], RESTRAINING orders issued under this section may restrain the petitioner's actions only if the court finds that the petitioner, in addition to the respondent, has engaged in abusive or assaultive behavior as described by

subsection (3)(a).

~~(6)~~(10) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may issue a temporary injunction and an order for temporary maintenance or support in amounts and on terms just and proper in the circumstance.

~~(7)~~(11) A temporary order or ~~temporary~~ injunction or permanent injunction:

~~(a) does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings in the proceeding;~~

~~(b)~~ may be revoked or modified ~~before final decree~~ on a showing by affidavit of the facts necessary to revocation or modification of a final decree under 40-4-208 or order under Title 27, chapter 19, part 3, as appropriate;

~~(c)~~(b) terminates upon order of the court or ~~when a final decree is entered or~~ when a the petition ~~for dissolution or legal separation~~ is voluntarily dismissed; and

~~(d)~~(c) when issued under this section must conspicuously bear the following: "Violation of this order is a criminal offense under 45-5-626."

~~(8)~~(12) When the petitioner has fled the parties' residence, notice of petitioner's new residence must be withheld except by order of the court for good cause shown.

(13) As used in this section the following definitions apply:

(a) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(b) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(c) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex."

Section 2. Section 45-5-206, MCA, is amended to read:

"45-5-206. Domestic abuse. (1) A person commits the offense of domestic abuse if he the person:

(a) purposely or knowingly causes bodily injury to a family member or ~~household member~~ partner; or

(b) negligently causes bodily injury to a family member or partner with a weapon DURING OR IN CONNECTION WITH A QUARREL, FIGHT, OR ABUSIVE BEHAVIOR; or

~~(b)~~(c) purposely or knowingly causes reasonable

apprehension of bodily injury in a family member or ~~household-member~~ partner. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused must be presumed in any case in which a person knowingly points a firearm at or in the direction of a family member or ~~household-member~~ partner, whether or not the offender believes the firearm to be loaded.

(2) For the purposes of 46-6-311 and this section, ~~"family-member-or-household-member" means a--spouse,--former spouse,--adult-person-related-by-blood-or-marriage,-or-adult person-of-the-opposite-sex-residing-with--the--defendant--or who--formerly--resided--with--the--defendant,~~ the following definitions apply:

(a) "Family member" means mothers, fathers, children, brothers, sisters, and other past or present family members of a household. These relationships include relationships created by adoption and remarriage, including stepchildren, stepparents, and adoptive children and parents. These relationships continue regardless of the ages of the parties and whether the parties reside in the same household.

(b) "Partner" means spouses, former spouses, and persons who have been or are currently in a dating or ongoing intimate relationship with a person of the opposite sex.

(3) A person convicted of domestic abuse for the first

or second time shall be fined not to exceed ~~$500~~ $1,000 or be imprisoned in the county jail not to exceed ~~6--months~~ 1 year, or both. On a third or subsequent conviction for domestic abuse, the person convicted shall be fined not to ~~exceed~~ less than $500 and not more than $50,000 or and be imprisoned in the county jail or in the state prison for a term not ~~to--exceed~~ less than 10 days and not more than 5 years, or both.

(4) (a) A person convicted of domestic abuse ~~for--the first--or--second--time~~ shall be required to pay for and complete at least 6 months of counseling, totaling at least 25 hours:

(i) with a person licensed under Title 37, chapter 3, 17, 22, or 23;

(ii) with a professional person as defined in 53-21-102; or

(iii) in a specialized domestic violence intervention program.

(b) The counseling provided in subsection (4)(a) must be directed to the violent conduct of the convicted person. Subsection (4)(a) does not prohibit the placement of the convicted person in other appropriate treatment if the court determines there is no available treatment program directed to the violent conduct of the convicted person.

(c) Upon completion of the minimum counseling

requirements, the counselor shall notify the court that the defendant has completed the minimum counseling requirements and shall provide the court with a recommendation as to whether or not the defendant requires additional counseling. Upon recommendation of the counselor and direction of the court, the defendant may be required to pay for and complete additional counseling or treatment, such as chemical dependency treatment, or both.

(5) Willful failure to obtain or pay for counseling ordered under this section is a civil contempt of court."

Section 3. Section 46-6-311, MCA, is amended to read:

"46-6-311. Basis for arrest without warrant. (1) A peace officer may arrest a person when no a warrant has not been issued if the officer has probable cause to believe that the person is committing an offense or that the person has committed an offense and existing circumstances require immediate arrest.

(2) The summoning of a peace officer to a place of residence by a family member or ~~household member~~ partner constitutes an exigent circumstance for making an arrest. Arrest is the preferred response in domestic abuse cases involving injury to the victim, use or threatened use of a weapon, violation of a restraining order, or other imminent danger to the victim."

Section 4. Section 46-6-602, MCA, is amended to read:

"46-6-602. Notice of rights to victim upon arrest in domestic violence situation. Whenever a peace officer arrests a person for domestic abuse, as defined in 45-5-206, if the victim is present, the officer shall advise the victim of the availability of a shelter or other services in the community and give the victim immediate notice of any legal rights and remedies available. The notice must include furnishing the victim with a copy of the following statement:

"IF YOU ARE THE VICTIM OF DOMESTIC ABUSE, the county attorney's office can file criminal charges against your abuser. You have the right to go to court and file a petition requesting any of the following orders for relief:

(1) an order restraining your abuser from abusing you;

(2) an order directing your abuser to leave your household;

(3) an order preventing your abuser from transferring any property except in the usual course of business;

(4) an order awarding you or the other parent custody of or visitation with a minor child or children;

(5) an order restraining your abuser from molesting or interfering with minor children in your custody or a family member or partner, as defined in 45-5-206; or

(6) an order directing the party not granted custody to pay support of minor children or to pay support of the other

party if there is a legal obligation to do so".

Section 5. Section 46-9-302, MCA, is amended to read:

"46-9-302. Bail schedule -- acceptance by peace officer. (1) A judge may establish and post a schedule of bail for offenses over which the judge has original jurisdiction. A person may not be released on bail without first appearing before the judge when the offense is domestic abuse or any assault against a family member or a ~~household member~~ partner, as defined in 45-5-206.

(2) A peace officer may accept bail on behalf of a judge:

(a) in accordance with the bail schedule established under subsection (1); or

(b) whenever the warrant of arrest specifies the amount of bail.

(3) Whenever a peace officer accepts bail, the officer shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the judge before whom the offender is to appear, and the judge shall give a receipt to the peace officer for the bail delivered."

-End-